



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Habitat Conservation Division
777 Sonoma Avenue, Suite 325
Santa Rosa, California 95404

November 9, 2000

Harry M. Schueller Chief
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, California 95812-0200

Dear Mr. Schueller:

I am responding to your Notice of Public Meeting to discuss improving the water rights process and procedures. Written comments are being provided in case the National Marine Fisheries Service does not provide formal testimony at the November 27th meeting. Our comments are presented in the order suggested in your Notice. Thank you for this opportunity to comment.

Application Processing

As the California population grows, the demand for new water rights permits will increase. It seems appropriate to re-examine the process used by the Board to balance the public need for this limited resource.

1. Protests. NMFS attempts to protest only those applications that could adversely affect anadromous fish species; most species are protected by the federal Endangered Species Act. With the limited NMFS staff assigned to assist the Board in reviewing applications, it is extremely difficult to attend the numerous and mandatory public workshops and field inspections without getting our protests dropped from consideration by the Board. Among other relief actions, written testimony or independent site inspections should be considered by the Board as appropriate justification to preserve a formal protest.

2. Fully Allocated Streams. There is little doubt that many streams and rivers in developing watersheds are, or will become, fully allocated. A working group comprised of resource agency managers should be commissioned to examine a new procedure for determining how and when a stream is fully allocated. It should not be necessary to adjudicate a watershed, which at this time seems inevitable.

3. Hydrologic Analysis: Although the Board attempts to perform hydrologic analysis on



each application, it is not appropriate to make conclusions when limited or insufficient hydrologic data are available. This renders the assessment invalid. Stream flow data are essential in this assessment. We recognize that stream gages are needed and that they do not occur in enough streams to make this a practical solution. Therefore, we recommend that a work group be commissioned to identify the gage type, the number of gages, and locations to be gaged and begin a revised methodology for making scientifically based hydrologic analyses. An adequate budget should be sought to purchase, install, and monitor these gages. This should be initiated immediately.

4. Guidelines for Making Hydrologic Assessments.

Guidelines for assessing permit applications are presently being developed jointly between the NMFS and the California Department of Fish & Game. We recommend that these guidelines be adopted by the Board as an adaptive management tool for processing the large number of pending water rights applications in Marin, Sonoma, Napa, and Mendocino counties. Once more data are available from an ambitious stream gaging effort, these guidelines can be re-examined by the Board jointly with NMFS and CDFG.

We further recommend that the NMFS/CDFG guideline principles be examined jointly by the Board, NMFS, and CDFG for application in other watersheds with different hydrologic characters. NMFS would assist fully in this effort.

Compliance

1. With the growing domestic and agricultural demand for California water, it is imperative that the Board be fully staffed to begin an aggressive compliance program. This element of managing water rights is long overdue. Neither permit compliance nor unlawful diversions are being adequately monitored. Although immediate monitoring of each permit holder is not essential, a very ambitious compliance program should be designed, staffed, and initiated immediately.

2. Further processing of new water rights permits in specific watersheds should be held in abeyance until a much improved compliance program is in place. NMFS is available to assist in identifying those watersheds that are providing the most adverse impact to listed fish species.

Enforcement

1. It is fairly common knowledge that many water diversions, especially in the Russian River and Navarro River watersheds, are operating without Board authorization. These should be individually identified and placed on notice that they are in violation of State law and possibly the federal Endangered Species Act as well.


2. The Board should consider initiating an outreach effort in select watersheds, notifying county and city planning officials, and the public-at-large that compliance and enforcement programs are being developed by the Board. The outreach project(s) could also describe: 1) proper water rights permitting procedures; 2) that an application on file with the Board's is not authority to proceed with project installations/operations;

3) that it is likely that applications will not be approved without thorough hydrologic evaluation and approved mitigation for impacts to aquatic resources.

Hearings

1. Again, the NMFS is not sufficiently staffed to attend every Board hearing. Although we will attempt to augment or staff to meet this obligation (and preserve a protest), we prefer a more efficient use of Board and NMFS staffs by assuring a NMFS protest throughout the permitting process, regardless of ability to stand in front of the Board. We will make every effort to participate at hearings (or provide written information that will be made available timely to the hearing officer) so that permit actions are not delayed.

Sincerely,

A handwritten signature in black ink, appearing to read "James Bybee", with a long horizontal flourish extending to the right.

James Bybee
Habitat Manager
Northern California

cc: Trout Unlimited, Stan Griffin
CDFG, Robert Height
CDFG, Robert Floerke